

Sales of canned computer software are subject to Retailers' Occupation Tax. See, Section 130.1935. (This is a GIL.)

November 14, 2000

Dear Xxxxx:

This letter is in response to your letter received August 8, 2000. We regret our delay in responding. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See, 2 Ill. Adm. Code 1200.120 (b) and (c), which can be found on the Department's website at [www.revenue.state.il.us/legalinformation/regs/part1200](http://www.revenue.state.il.us/legalinformation/regs/part1200).

In your letter, you have stated and made inquiry as follows:

We are considering an alternative way to furnish software to our clients and request the tax ruling regarding the taxability in the following proposed situations

We rent or lease asset liability management software to our clients as an alternative to purchasing. This license of software does not appear to be taxable because it follows Section 130.1935, 1)A,B,C,D&E. Please confirm.

If we send supportive software monthly such as rate forecast updates, to update the rented software thereby enhancing the original software's capability to more accurately forecast future balances, is this rate software taxable if bundled with the rental? If, we charge extra on the monthly rental for this service, is the extra charge taxable? Or does the whole original rental become taxable? Or is none of it still taxable? If the rates are sent via e mail how does this impact the taxability?

If we send at no additional charge to the rental client quarterly software that gives peer data to them, helping them to compare themselves to their peers, does this create a tax liability? The software we send to them is modified to include only the peer data that the particular clients wants to use for comparison. They usually want the data from the state that they are located in or surrounding states, although other specifications may be a consideration in determining what areas we include. As long as the client is renting the original software from us, this software is sent to the client at no additional charge. Is this additional software taxable and if so on what amount, the whole rental, the in-house retail value of the software, or is none of it taxable?

Your answer to these questions is most greatly appreciated. Please feel free to call me with any questions.

The retail sale of canned computer software is fully taxable in Illinois as the sale of tangible personal property. Please refer to the enclosed copy of 86 Ill. Adm. Code 130.1935. As the regulation indicates, canned software is considered taxable, regardless of the manner in which it is transferred. Consequently, software which is transferred electronically is considered subject to tax. However, if transactions for the licensing of computer software meet all the criteria specified in subsection (a)(1)(A) - (E) of Section 130.1935, neither the transfer of the software nor any subsequent software updates will be subject to Retailers' Occupation Tax. We are not able to confirm whether the license which your company utilizes meets these criteria, since we did not receive a copy of your license with your letter. However, we urge you to apply the principles contained in the regulation to your specific situation.

We do not know whether the monthly supportive software you send to clients is subject to a maintenance agreement. We hope the following information on maintenance agreements is useful. In general, maintenance agreements that cover computer software are treated the same as maintenance agreements for other types of tangible personal property. See the enclosed copy of Section 130.1935. The taxability of maintenance agreements depends upon if the charges for the agreements are included in the selling price of the tangible personal property. If the charges for the agreements are included in the price of the tangible personal property, those charges are part of the gross receipts of the retail transaction and are subject to tax. No tax is incurred on the maintenance services or parts when the repair or servicing is performed.

If maintenance agreements are sold separately from tangible personal property, sales of the agreements are not taxable transactions. However, when maintenance services or parts are provided under the maintenance agreements, the service or repair companies will be acting as service providers under provisions of the Service Occupation Tax, 35 ILCS 115/1 et seq., that provide that when service providers enter into agreements to provide maintenance services for particular pieces of equipment for stated periods of time at predetermined fees, the service providers incur Use Tax (see 35 ILCS 105/1 et seq.) based on their cost price of the tangible personal property transferred to customers incident to completion of the maintenance service. See, 86 Ill. Adm. Code 140.301 (b)(3), enclosed.

Charges for updates of canned software are fully taxable under Section 130.1935. If the updates qualify as custom software under Section 130.1935, they may not be taxable. However, if maintenance agreements provide for updates of canned software, and the charges for those updates are not separately stated and taxed, then the whole maintenance agreement would be taxable as a sale of canned software.

We do not have enough information to provide specific guidance regarding the taxability of the quarterly software which you transfer. If this software is an update provided in connection with a nontaxable license of software, it is generally not considered taxable. If this is not the case, however, or if it also does not constitute the transfer of custom software (see discussion below), your client will incur Use Tax on its transfer. In Illinois, persons who donate or give away tangible personal property to others at no charge are considered the users of that property and incur a Use Tax liability. See the enclosed copy of Section 150.305. Your letter implies that this software may be sold to others if they do not receive the original software from you. If this is the case, it may be taxable as canned software. However, please be advised that if this software consists of custom computer programs, then the sales of such software may not be taxable retail sales. See Section 130.1935 (c). Custom computer programs or software are prepared to the special order of the customer. The selection of pre-written or canned programs assembled by vendors into software packages does not constitute custom software unless real and substantial changes are made to the program or creation of program

interfacing logic. See Section 130.1935 (c)(3). We cannot determine from the limited information whether the quarterly software which you send would be considered custom software.

I hope that this information is helpful. The Department of Revenue maintains a web site which can be accessed at [www.revenue.state.il.us](http://www.revenue.state.il.us). If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of the enclosed copy of Section 1200.110 (b).

Very truly yours,

Jerilynn Gorden  
Senior Counsel, Sales & Excise Tax

Enc.